

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

Jack Brooks and Ellen Brooks, on behalf)	
of themselves and all other similarly)	
situated,)	
)	C.A. No. 8:07-3988-HMH
Plaintiffs,)	
)	
vs.)	OPINION & ORDER
)	
GAF Materials Corporation,)	
)	
Defendant.)	

This matter is before the court on the court’s sua sponte review of subject matter jurisdiction over the instant action. This action was commenced with the filing of a complaint in the Newberry County Court of Common Pleas on April 17, 2006. GAF Materials Corporation (“GAF”) removed the action to this court on May 26, 2006. See C.A. No. 8:06-1613-HMH (2006). The Plaintiffs moved to remand the case. The court granted the Plaintiffs’ motion on July 24, 2006. On November 19, 2007, the Plaintiffs filed an amended complaint in the Newberry County Court of Common Pleas, alleging a class action against GAF. This action was again removed to federal court by GAF on December 12, 2007.

28 U.S.C. § 1446(b) states that

[i]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

28 U.S.C. 1446(b); see also Lovern v. Gen. Motors Corp., 121 F.3d 160, 163 (4th Cir. 1997); Robinson v. J.F. Cleckley & Co., 751 F. Supp. 100, 105 (D.S.C. 1990) (“[I]t is clear that the congressional intent in promulgating the one-year cap on removal was to limit federal jurisdiction.”).

“[T]he interpretation of the one-year cap is contingent upon an interpretation of state procedure.” Robinson, 751 F. Supp. at 104. Under Rule 3(a) of the South Carolina Rules of Civil Procedure, “all civil lawsuits are ‘commenced’ by the filing and service of a summons and complaint.” Id. The instant case has been pending for more than one year after its commencement. Based on the foregoing, this case was improperly removed by GAF.

Therefore, it is

ORDERED that this case is remanded to the Court of Common Pleas for Newberry County, State of South Carolina.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
December 18, 2007